

# TECHNICAL MEMORANDUM

## Utah Coal Regulatory Program

---

January 27, 2010

TO: Pat Collins at Mount Nebo Scientific

THRU: Daron Haddock , Permit Supervisor *DH*

FROM: Joe Helfrich, Biologist *JH*

RE: Draft Burrowing Owl Mitigation Plan, Consolidation Coal Company, Emery Deep Mine, Permit # C/015/0015

### SUMMARY:

On January 20<sup>th</sup> the Division received a draft Burrowing Owl mitigation plan for Consolidation Coal Company's Emery Deep Mine. The plan was developed in conjunction with the December 9<sup>th</sup> site visit to the location where a Burrowing Owl was previously observed utilizing a White Tailed Prairie dog burrow. Members from Consol, the mine, state and federal wildlife agencies, DOGM and Mount Nebo Scientific discussed conceptual plans to offset potential impacts from planned subsidence to the prairie dogs and potential nesting Burrowing owls. The mitigation plan was "E" mailed to Joe Helfrich from Pat Collins at Mount Nebo Scientific. The plan was then distributed by way of "E" mail to the following team members for comment: Dave Waller & Mike Glasson (BLM), Nicole Nielsen (DWR), Nathan Darnall (USFWS), and Ingrid Wieser (DOGM). This memo will include the following comments provided by the team members:

TECHNICAL MEMO

---

**TECHNICAL ANALYSIS:**

**OPERATION PLAN**

**FISH AND WILDLIFE INFORMATION**

Regulatory Reference: 30 CFR Sec. 784.21, 817.97; R645-301-322, -301-333, -301-342, -301-358.

➤ David Waller, BLM comments on the BURROWING OWL PROTECTION & ENHANCEMENT PLAN AT THE MILLER TRACT OF THE EMERY MINE January 2010

Page 2 – the statement is “Attempts will be made to utilize existing mounds created by prairie dogs” I would suggest that the mounds and burrows should be inactive prairie dog ones.

Page 3 – the statement is “Because damage caused by subsidence may be an issue here, these nests will also have an artificial floor connected to the walls of the nest.” An excellent idea, one that I had not thought of.

Page 4 – The statements are – “Surveys & Monitoring  
A survey will first be conducted in the Miller Tract area in March 2010. The purpose of the survey will be to assess the activity level of the resident prairie dogs and to monitor any activity of burrowing owls returning from their southern migration to choose potential nesting sites. Surveys will also be conducted in early and late April 2010 to monitor the prairie dogs and burrowing owls.  
Finally, monitoring will be conducted 10 days prior to and following subsidence in an attempt to record the impacts to the owls [that is, if subsidence occurs during the critical nesting period (March 1 – August 31)].”

I would suggest adding more details on how many days of surveying would be done such as – an evening and a morning survey each trip.

The addition of a trail camera mounted near the burrow where the owls were sighted the last time would be a suggestion to consider.

Lastly, a report of what was observed should be provided to UDOGM, who could then provide to other agencies.

➤ Mike Glasson, BLM  
Once this year's protection and monitoring activity is complete will this

be the end of the study? The coal will in all likelihood be mined out by the end of the year, with no further potential for subsidence.

Who will decide exactly where the artificial burrows will be built? Will Patrick work with Consol on-site to find the best locations? Just wondering who will be "directing" of the field work, or does Consol already know exactly what to do and where to do it? If so, just fine. I just don't want Consol to put forth their best efforts only to find out later that the nests "should've been built differently or at a slightly different location".

Nathan was going to speak with his enforcement folks and while there were no guarantees, we were going to try and give Consol a level of confidence that because of their cooperation and diligence, the USFWS would not pursue enforcement should an owl be taken despite the precautions.

➤ Nathan Darnall, USFWS

I spoke with Law Enforcement for about two hours (we discussed other projects too). I've attached language that might address Consol's concerns. Pay particular attention to the last sentence.

*The MBTA prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior. While the MBTA has no provision for allowing unauthorized take, the FWS recognizes that some birds may be taken during activities such as \_\_\_\_\_ even if all reasonable measures to avoid take are implemented. The U.S. Fish and Wildlife Service's (FWS) Office of Law Enforcement carries out its mission to protect migratory birds not only through investigation and enforcement, but also through fostering relationships with individuals and industries that proactively seeks to eliminate their impacts on migratory birds. Although it is not possible under the MBTA to absolve individuals, companies, or agencies from liability (even if they implement avian mortality avoidance or similar conservation measures), the Office of Law Enforcement focuses on those individuals, companies, or agencies that take migratory birds with disregard for their actions and the law, especially when conservation measures have been developed but are not properly implemented.*

#### Comments on the plan.

At the bottom of page 1, the plan makes a statement about prairie dogs that "little impact is expected by subsidence on their overall population in this area." I believe that is an unknown at this time and we don't know how prairie dogs will respond. In addition, any data gathered about burrow collapse, numbers killed or impacts to the colony would be useful if the white-tailed prairie dog were ever listed under the Endangered Species Act. Perhaps the statement could be

written something like this....

Subsidence may collapse burrows used by white-tailed prairie dogs and individual dogs may be killed; however, planned subsidence may have minimal impact on burrows due to the way the land is expected to "fall." This should minimize the impact on prairie dogs, but the effects of subsidence on burrows are an unknown at this time. If burrows collapse, prairie dogs can dig new burrows or may be able to reopen collapsed burrows. Finally, because of the population size of the resident prairie dogs in the Miller Tract area (as well as their capability to adapt and dig additional burrows) little impact is expected by subsidence on the overall population in this area. Still, data will be collected to address the uncertainties about the effects of subsidence on burrows and the prairie dog colony.

Page 2

I would try to avoid digging up burrows being used by prairie dogs

Page 3

I like the idea to attach a bottom and drill drainage holes....good job.

Page 4

Maybe a quick note about visiting (monitoring) the two closed boxes to see what effect subsidence had on them, and then opening them up for possible future use in following years.

-----

The plan includes conservation measures to protect burrowing owls by creating additional nesting sites that should hold up to subsidence as well as potentially increase productivity by reducing predation. That's great and I like it.

I would like to see a more detail or surveys / monitoring for prairie dogs. Perhaps that could be included in a separate document / plan? There is a belief that the burrows won't collapse. I'd like to know if that's true, both for prairie dogs and for burrowing owls.

Thanks,  
Nathan

> Joe Helfrich, DOGM  
Pat, I would suggest a map or figure that shows the following information:

The location of the burrow where the owl was observed, the proposed locations of the seven artificial burrows noting their purpose e.g. subsidence test burrow, potential nest site burrow etc. and the location of the panel to be mined where planned subsidence is predicted. I believe these features could be easily identified on the map John sent us after the meeting.

Maybe the burrow locations actual and artificial could be GPS'ed and plotted on John's map after they are installed.

Once installed, should any of the burrows slated for alternative nest locations be kept closed to keep the dogs out?

At the end you may want to include a section summarizing the results and conclusions.

### **RECOMMENDATIONS:**

The comments provided by the team members are recommended for incorporation in the draft Burrowing owl mitigation plan.

O:\015015.EME\FINAL\Burrowing Owl commentsMemo.doc